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March 16, 2012

*In re Merck & Co., Inc. Securities Litigation (MDL 1658),*  
No. 05-CV-02367-SRC-MAS;  
*Stichting Pensioenfonds ABP v. Merck & Co., Inc., et al.,*  
No. 05-CV-05060-SRC-MAS;  
*AFA Livförsäkringsaktiebolag, et al. v. Merck & Co., Inc., et al.,*  
No. 07-CV-04024-SRC-MAS;  
*Allianz Global Investors KAG MbH, et al. v. Merck & Co., Inc., et al.,*  
No. 07-CV-04451-SRC-MAS;  
*Norges Bank v. Merck & Co., Inc., et al.,*  
No. 07-CV-04021-SRC-MAS;  
*Deka Investment GmbH, et al. v. Merck & Co., Inc., et al.,*  
No. 07-CV-04022-SRC-MAS;  
*Union Asset Management Holding AG, et al. v. Merck & Co., Inc., et al.,*  
No. 07-CV-04023-SRC-MAS;  
*DWS Investment GmbH, et al. v. Merck & Co., Inc., et al.,*  
No. 07-CV-04546-SRC-MAS;  
*KBC Asset Management NV, et al. v. Merck & Co., Inc., et al.,*  
No. 11-CV-06259-SRC-MAS

Dear Magistrate Judge Shipp:

We represent Defendants other than Dr. Scolnick in the above-captioned actions. Pursuant to this Court's Order of March 8, 2012, we submit this joint letter in advance of the March 23, 2012 status conference on behalf of the respective parties in the Consolidated Securities Action, 05-CV-02367-SRC-MAS (the "Class Action") and the eight individual actions: *Stichting Pensioenfonds ABP v. Merck & Co., Inc., et al.*, No. 2:05-CV-05060-SRC-MAS; *AFA Livförsäkringsaktiebolag, et al. v. Merck & Co., Inc., et al.*, No. 07-CV-04024-SRC-MAS; *Allianz Global Investors Kapitalanlagegesellschaft MbH, et al., v. Merck & Co., Inc., et al.*, No. 07-CV-04451-SRC-MAS; *Norges Bank v. Merck & Co., Inc., et al.*, No. 07-CV-04021-SRC-MAS; *Deka Investment GmbH, et al. v. Merck & Co., Inc., et al.*, No. 07-CV-04022-SRC-

MAS; *Union Asset Management Holding AG, et al. v. Merck & Co., Inc., et al.*, No. 07-CV-04023-SRC-MAS; *DWS Investment GmbH, et al. v. Merck & Co., Inc., et al.*, No. 07-CV-04546-SRC-MAS; and *KBC Asset Management NV, et al. v. Merck & Co., Inc., et al.*, 2:11-CV-06259-SRC-MAS (collectively, the “Individual Actions”).<sup>1</sup>

**I. Status of the Class Action**

The parties last participated in a telephonic status conference before Your Honor on December 12, 2011, to address various scheduling issues. In accordance with the Court’s determinations of those issues, Plaintiffs in the Class Action (“Class Plaintiffs”) and Defendants filed a Stipulation and [Proposed] Scheduling Order (the “Scheduling Order”) on December 16, 2011. On January 3, 2012, the Court entered the Scheduling Order, under which, *inter alia*, fact discovery closes on March 13, 2013, expert discovery closes in July 2013, and dispositive motions are to be fully briefed by December 13, 2013.

**A. Discovery**

**1. Document Discovery**

**(a) Fall 2011 Discussions of Defendants’ Previous Document Production**

As of September 2011, Defendants had produced to Class Plaintiffs over 24 million pages of documents and other materials originally produced in the Vioxx-related products liability litigations (the “Products Production”) and the ERISA and shareholder derivative actions. The Products Production comprises approximately 23 million pages and includes Vioxx-related documents from employees and non-custodial sources, as well as non-Vioxx-specific categories of documents.

Throughout the Fall of 2011, Class Plaintiffs’ counsel and Defendants’ counsel engaged in extensive correspondence and discussions regarding the nature and scope of the documents previously produced by Defendants, including lengthy face-to-face meet-and-confers on October 3, 2011, November 8, 2011, and December 5, 2011. To assist Class Plaintiffs in understanding the history and scope of the previous productions that constituted the materials already produced to Class Plaintiffs, Merck provided additional documents, including all document requests and responses from the ERISA and derivative actions, the federal products liability MDL, the California coordinated Vioxx litigation, and the New Jersey coordinated Vioxx litigation. Merck also provided Class Plaintiffs with an index of the productions made to

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<sup>1</sup> It is Defendants’ position that the Class Action and the Individual Actions are consolidated pursuant to this Court’s Order of May 6, 2005. Plaintiff Stichting Pensioenfonds ABP (“ABP”) maintains its position, set forth in its opposition to Defendants’ motions to dismiss, that the Individual Actions are not consolidated with the Class Action. ABP agrees that discovery is coordinated in the Class Action and Individual Actions as set forth in Magistrate Judge Shipp’s Order of January 3, 2012.

Class Plaintiffs from the Products Production, which included document categories and corresponding Bates ranges, as well as an index of the productions made in the ERISA action that included Bates ranges and corresponding production dates. At Class Plaintiffs' request, Defendants arranged an in-person meeting with Merck's counsel, Charles Cohen of Hughes Hubbard & Reed LLP, the attorney Merck identified as most knowledgeable about Merck's collection and production efforts that resulted in the Products Production.

**(b) Formal Discovery Since the Scheduling Order**

Pursuant to the Scheduling Order, on January 13, 2012, the Class Plaintiffs and Defendants exchanged initial disclosures under Federal Rule of Civil Procedure 26(a).

On December 21, 2011, Defendants served their first set of requests for the production of documents on Class Plaintiffs. Class Plaintiffs served their responses and objections to Defendants' first set of requests for the production of documents on February 6, 2012. On January 13, 2012, Class Plaintiffs served their first set of requests for the production of documents on Defendants. On March 1, 2012, Defendants served their responses and objections to Class Plaintiffs' first set of requests for the production of documents, and, on March 8, 2012, Defendants began producing additional documents responsive to Class Plaintiffs' first set of document requests. On January 27, 2012, Defendants served their first set of interrogatories on Class Plaintiffs. On March 6, 2012, Class Plaintiffs served their objections and responses to Defendants' first set of interrogatories.

On March 2, 2012, Defendants sent a letter to Class Plaintiffs, raising various questions with respect to Class Plaintiffs' responses and objections to Defendants' first set of requests for the production of documents. Also, on March 2, 2012, Class Plaintiffs and Defendants agreed to a face-to-face meet-and-confer to discuss, *inter alia*, Class Plaintiffs' responses and objections to Defendants' first set of requests for the production of documents and Class Plaintiffs' objections and responses to Defendants' first set of interrogatories. That meet-and-confer occurred on March 9, 2012. Class Plaintiffs will begin producing documents on or before March 19, 2012, and are presently reviewing the matters discussed at the meet-and-confer. On March 8, 2012, Class Plaintiffs sent a letter to Defendants, raising various questions with respect to Defendants' responses and objections to Class Plaintiffs' first set of requests for the production of documents. On March 9, 2012, Class Plaintiffs and Defendants agreed to a face-to-face meet-and-confer to discuss, *inter alia*, Defendants' responses and objections to Class Plaintiffs' first set of requests for the production of documents. That meet-and-confer occurred on March 15, 2012; the parties are currently reviewing the matters discussed at the meet-and-confer.

On February 21, 2012, Class Plaintiffs served Defendants with notices of subpoenas *duces tecum* issued to 54 non-parties, including, but not limited to, clinical research organizations, former members of Merck's Board of Scientific Advisors, various financial institutions and other pharmaceutical companies, and Class Plaintiffs served (or are in the process of serving) those non-parties with those subpoenas. The subpoenas called for responses between March 9 and 13, 2012. Class Plaintiffs and Defendants have agreed that non-party documents produced to either of them in response to a non-party subpoena shall be provided, or otherwise made available to, all other parties in this action.

## **II. Status of the Individual Actions**

### **A. Defendants' Motions to Dismiss in *Stichting Pensioenfonds ABP v. Merck & Co., Inc., et al.*, No. 2:05-CV-05060-SRC-MAS**

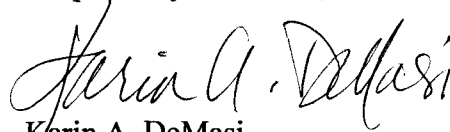
Pursuant to the Court's October 6, 2011 Order, Defendants moved to dismiss the Second Amended Complaint in *Stichting Pensioenfonds ABP v. Merck & Co., Inc., et al.* (the "*ABP Action*"), on January 20, 2012. Plaintiff Stichting Pensioenfonds ABP ("ABP") filed its opposition to Defendants' motions to dismiss on March 5, 2012. Defendants' replies to ABP's opposition brief are due March 26, 2012.

Under the October 6, 2011 Order, Defendants' time to move or otherwise respond to the operative complaints in the other Individual Actions is stayed until 45 days after a decision on the motions to dismiss in the *ABP Action*.

### **B. Discovery in the Individual Actions And Coordination with the Class Action**

The parties to the Individual Actions have not yet commenced discovery. Pursuant to the Court's Scheduling Order, discovery in the Individual Actions will be coordinated with the discovery in the Class Action, and the parties shall enter into a stipulation "providing for the coordination of discovery and the arrangements therefor." (Jan. 3 Order at 4.) Defendants have drafted a proposed discovery coordination stipulation, which was circulated to all parties for review on February 29, 2012. On March 15, 2012, Class Plaintiffs and Individual Action Plaintiffs provided joint comments on the draft stipulation to Defendants. Defendants are reviewing such comments. The parties expect to submit an agreed-upon stipulation shortly to the Court.

Respectfully submitted,

  
Karin A. DeMasi

Honorable Michael A. Shipp, U.S.M.J.  
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& U.S. Courthouse  
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